

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BRIAN JAMIE ROETHLISBERGER,

Plaintiff,

- against -

THE NEW YORK TIMES COMPANY

Defendant.

Docket No. 1:20-cv-3230

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Brian Jamie Roethlisberger (“Roethlisberger” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant The New York Times Company (“New York Times” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of a male model, owned and registered by Roethlisberger, a New York based professional photographer. Accordingly, Roethlisberger seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Roethlisberger is a professional photographer in the business of licensing his photographs for a fee having a usual place of business at 689 Myrtle Avenue, 1D, Brooklyn, New York 11205.

6. Upon information and belief, New York Times is a domestic business corporation duly organized and existing under the laws of the State of New York with a place of business at 620 Eighth Avenue, New York, New York 10018. Upon information and belief, New York Times is registered with the New York Department of State Division of Corporation to do business in the State of New York. At all times material hereto, New York Times has owned and operated a Website at the URL: [www.NYTimes.com](http://www.NYTimes.com) (the “Website”) and has

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

7. Roethlisberger photographed a male model (the “Photograph”). A true and correct copy of the Photograph are attached hereto as Exhibit A.

8. Roethlisberger is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph were registered with United States Copyright Office and were given Copyright Registration Number VA 2-142-839.

#### **B. Defendant’s Infringing Activities**

10. New York Times ran an article on the Website entitled *A Pair of Boxers for \$400? Men’s Underwear Goes High-End*. See: <https://www.nytimes.com/2015/11/26/fashion/a-pair-of-boxers-for-400-mens-underwear-goes-high-end.html>. The article featured the

Photograph. A true and correct copy of the article and a screenshot of the Photograph on the articles are attached hereto in Exhibit B.

11. New York Times did not license the Photograph from Plaintiff for its article, nor did New York Times have Plaintiff's permission or consent to publish the Photograph on its Website.

12. Roethlisberger first discovered the use of the Photograph on the Website in April 2020.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. New York Times infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on its Website. New York Times is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by New York Times have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant New York Times be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded punitive damages for copyright infringement;
5. That Plaintiff be awarded attorney's fees and costs;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
April 23, 2020

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